IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Crl.L.P..No. 423 of 2007()

CC.1179/2004 of J.M.F.C.-II, ALUVA

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PETITIONER/COMPLAINANT

SINDHU P.R., AGED 38 YEARS,
D/O. LATE P.K.RAGHAVAN, RAGHAVEEYAM,
VATTEKUNNAM, EDAPPALLY NORTH P.O., KOCHI-25.

BY ADV. SRI.T.N.SURESH
SRI.ROY THOMAS

RESPONDENTS: ACCUSED

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1. P.R.SUBRHAN @ SUBRAHAMANIAN,
AGED 45 YEARS, S/O. LATE RAMAN,
PANANTHPARAMBU, M.G.NAGAR, KOODAPUZHA P.O.,
CHALAKUDY, THRISSUR.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2- BY P.P.SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL LEAVE PETITION HAVE COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P..NO.423 OF 2007

Dated this the 4th day of July, 2007.

JUDGMENT

This is an application for special leave to appeal against the judgment passed in C.C.No.1179/2004 on the file of the Judicial Magistrate of First Class-II, Aluva. The petitioner/complainant filed a complaint before the court below alleging that the 1st respondent, none else the husband of the complainant, had committed the offences punishable under Sections 498 A and 406 of the I.P.C. The marriage between the petitioner/complainant and the 1st respondent was conducted on 30.8.2003. The allegation in the complaint was that an amount of Rs. 30,000/= and gold ornaments weighing 15 soverings entrusted with the 1st respondent at the time of marriage, were misappropriated by the 1st respondent. It was further alleged that even at the date of the marriage itself, the petitioner was neglected by the 1st respondent as the petitioner was left alone at the marriage reception. Further it was alleged that the petitioner/complainant was physically assaulted on several occasions and that the 1st respondent used to have the company of one Thankamma – a relative of the 1st respondent and the 1st respondent

even asked the petitioner to give her salary to said Thankamma. To prove the above allegations, the complainant herself was examined as PW1 and three other witnesses were also examined. Exhibits P1 to P3 were relied on by the petitioner/complainant. After closing the evidence adduced on behalf of the petitioner, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. The 1st respondent denied the allegations in the complaint and had stated that he had not committed any offence as alleged. After considering the entire evidence, the trial court found that the petitioner/complainant miserably failed to prove the allegations levelled against the 1st respondent. Hence, the 1st respondent was acquitted. Against that judgment, this special leave to appeal has been filed.

2. This Court heard the learned counsel appearing for the petitioner/complainant in detail. The main contention of the learned counsel appearing for the petitioner is that there was evidence to show that the petitioner was physically assaulted, harassed and was neglected by the 1st respondent from the date of the marriage itself. Further it is contended that it is an admitted case by the 1st respondent as he had accepted dowry of Rs.30,000/= and certain

ornaments at the time of the marriage from the parents of the petitioner. If so, the finding entered by the trial court is perverse.

3. This Court had considered the contentions of the learned counsel and perused the judgment and other records made available to this court. The specific contention of the petitioner before the court was that even on the date of the marriage onwards, the petitioner was being neglected by the 1st respondent and he had an illicit relationship with one Thankamma and on some times the 1st respondent asked the petitioner to give her salary to the said Thankamma. From the evidence adduced before the court, it is not possible to hold that the allegations in the complaint are true as it is seen that the marriage between the petitioner and the 1st respondent had been conducted on 30.8.2003. The complaint as alleged has been filed only on 16.11.2004, after a lapse of more than 14 months. In the mean while, there is no evidence to show that what had happened during these 14 months and there is no evidence for any ill treatment by the 1st respondent or any member of his family. The only allegation stated in the complaint was that the 1st respondent assaulted the petitioner on 5.11.2004 though she was not admitted in the hospital, that was seen by PW2 - a

neighbour of the petitioner. But, there is no evidence to show actually the petitioner was ill treated or assaulted by the 1st respondent. PW2 was not supporting the case at all as he had stated that he heard some wordy altercations between the petitioner and the 1st respondent and nothing else. There is no other evidence to support the version of PW1- the petitioner to prove that the 1st respondent had actually assaulted or neglected her from 30.8.2003 onwards. That apart, the main allegation was that she was neglected because of the illicit relationship between one Thankamma and the 1st respondent. It was come out in evidence and admitted by PW1 that Thankamma is an old woman who brought up the 1st respondent at the very early ages and she is having doubled the age of the 1st respondent. If so, the illicit relationship alleged by the petitioner cannot be accepted by this Court. That apart, the evidence adduced by Pws 3 and 4 would not prove that any harassment has been made against the petitioner by the 1st respondent as contemplated under Section 498 A of the I.P.C. As per the provisions of Section 498 A, it should be proved that the husband of a married woman or his relative should commit cruelty either physical or mental. But, here there is no evidence adduced by PW1- the petitioner to prove any physical assault has been committed

against her by the 1st respondent. The only allegation as stated in the complaint was that she was being neglected only because of the relationship between Thankamma and the 1st respondent. That by itself is not a reason to hold that the petitioner was being neglected or meted out any cruelty as contemplated under Section 498 A of the I.P.C. Apart from the allegation of cruelty, it was alleged that dowry and the gold ornaments given to PW1 - the complainant, were misappropriated by the husband - the respondent. For that, there is no evidence except that of PW4, who had stated that he was also present at the time of marriage and receipt of the amount of dowry as stated by PW1. But, that by itself do not show that the said amount or ornaments have been misappropriated by the 1st respondent, so as to attract an offence punishable under Section 406 of the I.P.C.

In the above circumstances, this Court is of the view that the allegations in the complaint are frivolous and the petitioner purposefully brought the 1st respondent before the court to face criminal trial. In the above circumstances, there is no evidence to proceed against the 1st respondent. Accordingly, the judgment of the trial court is confirmed and the special leave to appeal stands

dismissed imposing compensation on the petitioner.

K. THANKAPPAN, JUDGE.

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